IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

CRP.No. 374 of 2007()

AGAINST THE ORDER DATED 14/05/2007 IN IA NO. 74/2007 IN WOS.18/2007 of WAKF TRIBUNAL, ERNAKULAM

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REVN. PETITIONER: PLAINTIFF

MUTHAWALLI, MADEENA MASJID, PULLEPPADY
AND M/S.COCHIN ISLAMIC WELFARE TRUST,
REP. BY ITS CHAIRMAN MR.P.K.HASHIM,
S/O ABDUL RAHIMAN, BUSINESS, RESIDING AT
HOUSE NO.39/515, BONANZA, ARANGATH CROSS ROAD,
ERNAKULAM.

BY ADV. SRI.T.KRISHNAN UNNI
SRI.T.U.ZIYAD

RESPONDENTS: DEFENDANTS

1. KERALA JAMA ATH ISLAMI HIND,
DISTRICT OFFICE, PULLEPPADY,
ERNAKULAM, KERALA,
REPRESENTED BY ITS DISTRICT PRESIDENT.

2. BASHEER MUHIYIDHEEN, S/O MOIDU MOULAVI,
PRESENTLY RESIDING AT ISLAMIC CENTRE,
PULLEPPADY, KOCHI-18.

BY ADV. SRI.T.H.ABDUL AZEEZ
SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON 05/07/2007 PASSED THE FOLLOWING:

ORDER ON I.A. 1138/2007 IN C.R.P. NO. 374/2007

DISMISSED

05.07.2007 SD/- KURIAN JOSEPH, JUDGE.

SD/- T.R. RAMACHANDRAN NAIR, JUDGE.

/True Copy/

P.A to Judge.

C.R.

KURIAN JOSEPH & T.R.RAMACHANDRAN NAIR, JJ.

C.R.P.No.374 of 2007

Dated 5th July, 2007.

O R D E R

Kurian Joseph, J.

Whether a suit or other legal proceedings can be maintained on behalf of an unregistered Wakf for enforcement of any of its rights before the Wakf Tribunal, is the crucial question arising for consideration in this case. Petitioner is the plaintiff in W.O.S.18/07 on the file of the Wakf Tribunal, Ernakulam. The defendants are the respondents herein. The suit is one for permanent prohibitory injunction. Petitioner is the Chairman of a Trust managing Madeena Mazjid, Pullepady. One Abdul Sathar Moulavi was appointed by the Muthavalli as Imam and Khathib of the Mosque as per the Wakf deed. However, the first respondent organization and the second respondent claimed that the second respondent is the Imam and Khathib of the Mosque, as usually nominated by the first respondent organization. On their attempt to interfere with the control and management of the affairs of the Mosque the suit was filed. Along with the suit, I.A.74/07 was filed for temporary injunction. The suit and the application were

contested by the respondents. The application was disposed of by the order under revision dated 14.5.2007 of the Wakf Tribunal holding that the suit itself is not maintainable, in view of the bar under Section 87 of the Wakf Act, 1995, since the Wakf is not registered with the Wakf Board under Section 36 of the Wakf Act. Consequently, the application was also held to be not maintainable. However, partial relief was granted in favour of the second respondent to continue as the Imam of the Mosque till the disposal of the suit. It is the main contention of the revision petitioner that the suit is one filed by the mutawalli of Madeena Mazjid and the same is maintainable under Section 83(2) of the Wakf Act, 1995. It is also contended that the bar provided under Section 87 of the Act will not apply for maintaining a suit before the Wakf Tribunal since the same is applicable only to the civil court.

2. In order to appreciate the contentions taken by the parties, it is necessary to refer to three relevant portions, (i) Section 83 (1) and (2), (ii) Section 85 and (iii), Section 87 of the Wakf Act, which read as follows :-

> "83. Constitution of Tribunals, etc.-
> (1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the

> determination of any dispute, question or other matter relating to a wakf or wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.
> (2) Any mutawalli, person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the wakf."
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> "85.Bar of jurisdiction of civil courts:- No suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal."
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> 87. Bar to the enforcement of right on behalf of unreggistered wakfs:-
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> (1) Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any court after the commencement of this Act, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit, appeal or other legal proceeding shall be continued, heard, tried or decided by any court after such commencement unless such wakf has been registered, in accordance with the provisions of this Act.
>
> (2) The provisions of sub-section (1) shall apply as far as may be, to the claim for set off or any other claim made on behalf of any wakf which has not been registered in accordance with the provisions of this Act."

As far as the jurisdiction of the Tribunal is concerned, the law is well settled by a bench decision of this Court in **Pookoya Haji v. Cheriyakoya** (2003(3) KLT 32) that "The words any dispute, question or other matters relating to Wakf or Wakf property

under S.85 are wide enough to take in within its sweep not only matters which are specifically conferred on the Tribunal by the various provisions of the Act but also any dispute, question or any other matter relating to any Wakf or Wakf property since those powers have also been conferred on the Tribunal by the Wakf Act itself. On examining the scheme of the Act and various provisions we are of the view that the intention of the Legislature is to resolve all disputes by one machinery and forum provided in the Act itself, that is, the Wakf Tribunal and not by the Civil Courts in the State".

3. Under Section 83(2), (1)any mutawally or (2) person interested in a Wakf or (3) any person aggrieved by an order made under this Act is entitled to make an application to the Tribunal for the determination of any dispute, question or other matter relating to the Wakf. For thus approaching the Wakf Tribunal there is no precondition regarding the registration of the Wakf in question; the only jurisdictional factor is that the application by any of the three enumerated categories should be for the determination of any dispute, question or other matters relating to Wakf. In this context, it is also profitable to note that the "person interested in a wakf" is given a wide interpretation in

the Act itself, which reads as follows :-

> 3(k) "person interested in a wakf", means any person who is entitled to receive any pecuniary or other benefits from the wakf and includes-
> (i) any person who has a right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, khangah, maqbara, graveyard or any other religious institutions connected with the wakf or to participate in any religious or charitable institution under the wakf;
> (ii) the wakf and any descendant of the wakf and the mutawalli"

4. A close look at Section 87 would indicate that notwithstanding anything contained in any other law for the time being in force (and notwithstanding anything contained in the Wakf Act) no suit or appeal or other legal proceeding for the enforcement of any right on behalf of any Wakf shall be instituted or commenced or heard, tried or decided by any court, if the Wakf is not registered with the Wakf Board under Section 36 of the Act, after the commencement of the Wakf Act. The second limb of the provision clearly stipulates that no such suit, appeal or legal proceeding instituted prior to the commencement of the Act shall be continued by any court unless the Wakf has been registered in accordance with the provisions of this Act. It is significant to note that the Wakf Act, 1995 has used both expressions, "Court" and "Tribunal" in many places. For example, under Section 90(1) it is provided that "In every suit or

proceeding relating to a title or possession of a Wakf property or the right of mutawalli or beneficiary, the court or Tribunal shall issue notice to the Board at the cost of the party instituting such suit or proceeding". If the provisions are given a purposive interpretation, it is clear that in respect of the rights of a Wakf which are not enumerated under Section 83(1) and (2), a suit is still maintainable before the civil court, in case the Wakf is registered. Whether registered or not, for determination of any dispute, question or any other matter relating to any Wakf or Wakf property, the exclusive jurisdiction is on the Wakf Tribunal constituted under Section 83 of the Act and not on the civil court. The bar under Section 87 applies only to the civil court and not to the Tribunal. A joint reading of Sections 83, 85 and 87 would clearly show that the civil court has no jurisdiction to adjudicate on any dispute, question or other matter relating to any Wakf and Wakf property, or other matters which are to be determined by the Tribunal constituted under Section 83 of the Act. However, under Section 87, an additional privilege is granted to registered Wakfs to institute a suit or appeal or other legal proceedings before the civil court for the enforcement of any right on behalf of such Wakf which is not related to the Wakf.

5. In the instant case, the Wakf Tribunal also has not taken note of the fact that the plaintiff is styled as the mutawalli of Madeena Mazjid. Under Section 83(2) any mutawalli is entitled to make an application before the Tribunal for the determination of any dispute, question or other matters relating to the Wakf. Since the suit is one instituted by a person claiming to be the mutawalli of a Wakf and since the questions apparently are relating to the Wakf, for the only reason that the Wakf is not registered with the Wakf Board under Section 36 of the Wakf Act, it cannot be said that the suit is not maintainable before the Wakf Tribunal. The bar under Section 87 will not apply to the instant case. The suit is plainly maintainable before the Wakf Tribunal under Section 83 read with Section 85 of the Wakf Act.

6. In the result, the order in I.A.74/07 in W.O.S.18/07 of the Wakf Tribunal, Ernakulam is set aside. During the pendency of the revision petition, regarding Juma prayer in Madeena Mazjid on Fridays, this Court has ordered that the Juma prayer will be led by Shri.Abdul Sathar Moulavi. Kutuba (sermon) during the Juma prayers will be delivered by the second respondent herein. The said interim arrangement will continue till the disposal of the suit. There will be a direction to the Wakf

Tribunal to dispose of the suit expeditiously.

7. In respect of several matters, it has come to the notice of this Court that the Wakf Board is not made a party either before this Court or the Tribunal. In view of the clear mandate under Section 90 of the Act, in every suit or proceeding relating to title or possession of a Wakf property or the right of mutawalli or beneficiary, the court or Tribunal shall make the Wakf Board a party, at the cost of the party instituting such suit or proceedings. There will be a direction to the Wakf Tribunals in the State to issue notice to the Wakf Board at the cost of the party instituting the suit or proceedings, in case the same relates to title or possession of a Wakf property or the right of the mutawalli or beneficiary, if the Board is not already on the party array. A copy of this judgment will be sent to all the Wakf Tribunals in the State.

KURIAN JOSEPH, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

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KURIAN JOSEPH &

T.R.RAMACHANDRAN NAIR, JJ

L.A.A. NO. OF 2004

J U D G M E N T

Dated July, 2007.